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6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE DISTRICT OF ARIZONA

8 United States of America, ) CR 11-3599-TUC-CKJ (LAB)  
9 Plaintiff, ) **REPORT AND RECOMMENDATION**  
10 vs. )  
11 )  
12 Luis Miguel Raygoza-Leyva, )  
13 Defendant. )  
14 )

15 The District Court referred this case to the Magistrate Judge for hearing on the  
16 defendant's motion to suppress evidence resulting from an investigative stop and subsequent  
17 questioning. (Doc. 29) A hearing on the motion was held on May 18, 2012. (Doc. 37)

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19 **Charge:**

20 The defendant is charged with re-entry after deportation in violation of Title 8, United  
21 States Code §1326 (enhanced by § 1326(b)(2)). (Doc. 6)

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23 **Motion to Suppress:**

24 The defendant argues he was seized without reasonable suspicion and interrogated  
25 without being informed of his *Miranda* rights. He moves that this court suppress all evidence  
26 obtained as a result of the Fourth and Fifth Amendment violations.

27 The court finds no constitutional violations. The defendant's initial encounter with the  
28 agents was consensual. When the encounter ripened into an investigative detention, the

1 agents had reasonable suspicion. When the investigative detention ripened into an arrest, the  
2 agents had probable cause. Until his formal arrest, the defendant was not “in custody” for  
3 the purposes of *Miranda*.

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5 **EVIDENCE:**

6 **Matthew Robert Gardner**

7 Matthew Gardner is a U.S. Customs and Border Protection officer and has been so for  
8 a little over three years. On September 23, 2011, he was working at the Lukeville Port of  
9 Entry checking the outbound flow of traffic along State Route 85. Just north of the Port of  
10 Entry on the west side of Route 85 is a café. Just north of the café is a gas station. East of  
11 the café, across the street is a trailer park area.

12 Gardner observed a man walk from the trailer park area westward across Route 85 to  
13 the gas station and then southward toward the café.

14 Gardner is familiar with the people in the area, but he did not recognize the man. He  
15 knew that illegal aliens often congregate at the café and take the shuttle bus north. Gardner  
16 informed Border Patrol Agent Espinoza of his observations.

17 On cross-examination, Gardner conceded he did not see the man cross the border. At  
18 all times, the man he observed was in the United States, north of the border.

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20 **Frederico Espinoza**

21 Frederico Espinoza is an agent with U.S. Border Patrol and has been so for a year and  
22 a half. Espinoza observed the suspect and followed him into the café. Espinoza was wearing  
23 the standard Border Patrol green uniform. He was accompanied by Agent Rodriguez.

24 Espinoza approached the suspect, who was sitting at a table, and asked him his  
25 citizenship. Espinoza spoke in a conversational tone. He did not draw his weapon. He and  
26 Agent Rodriguez did not try to surround the suspect. He did not tell the suspect he had to  
27 answer their questions.  
28

1           The suspect, the defendant, stated he was a U.S. citizen and produced a California ID  
2 card. Espinoza asked how he had gotten there, and the defendant said he was dropped off at  
3 the gas station by a friend. Espinoza told the defendant that he saw him walk across the  
4 street from the trailer park, but the defendant maintained he was dropped off at the gas  
5 station. The agents asked if he would step outside to answer more questions, and the  
6 defendant complied. The agents spoke in a conversational tone. They did not tell the  
7 defendant that he had to come with them.

8           Espinoza asked the defendant if he knew where he was, but the defendant did not  
9 answer. He was “almost stuttering, basically shaking.” (Doc. 43, p. 33) The defendant then  
10 said he was visiting a friend at the trailer park.

11           Officer Hoffman appeared as backup and took the defendant’s California ID card to  
12 the processing room, or secondary inspection room, to run a check on it.

13           Espinoza asked the defendant if he would go to the secondary area, and the defendant  
14 agreed to do so. Because the ID check was inconclusive, the agents asked the defendant if  
15 they could take his fingerprints. The agents did not tell him that he had to comply or that he  
16 was under arrest. The defendant was not in a locked room with agents around.

17           From the fingerprints, the agents found the defendant had been deported from the  
18 Calexico Port of Entry two or three weeks earlier. The agents concluded the defendant was  
19 in the country illegally and arrested him.

20           On cross-examination, Espinoza testified that the defendant did not appear nervous  
21 when he was first approached in the café. He denied saying something to the effect of,  
22 “You’re not thinking about running, are you?” (Doc. 43, p. 42) He further denied having  
23 any physical contact with the defendant in the café or seeing Agent Rodriguez grab the  
24 defendant’s arm.

25           Espinoza asked the defendant “if he would mind stating his citizenship.” (Doc. 43,  
26 p. 43) The defendant spoke English and said he was a U.S. citizen. When asked for  
27 identification, the defendant produced a California ID card.

1 Espinoza had doubts about the defendant's citizenship because he looked out of place  
2 and seemed a little stiff. Also, his shirt was torn at the shoulder, and his pants and shoes had  
3 little tears and leaves on them. Espinoza conceded he did not state in his official report that  
4 the defendant had plant material on his pants or that his shirt was ripped.

5 He conceded he did not know what he would have done if the defendant refused to  
6 speak with him and got up to leave. He maintained the defendant was free to go even when  
7 he was being questioned outside. He conceded, however, that if the defendant tried to run  
8 away at that point, he would have chased the defendant down.

9 Espinoza agreed that when he asked the defendant how he got here, it is possible the  
10 defendant thought he was being asked how he got to the trailer park rather than how he got  
11 to the café.

12 Espinoza stated that the defendant was not read his *Miranda* rights that day.

13 On re-direct, Espinoza said he found it odd that someone at the Lukeville Port of  
14 Entry would have a California ID card.

15  
16 **Adam Hoffman**

17 Adam Hoffman is a U.S. Customs and Border Protection officer and has been so for  
18 approximately four and one-half years. He currently works at the Lukeville Port of Entry.

19 At approximately 12:30 p.m. on September 23, 2011, Hoffman was alerted by radio  
20 that his assistance was needed to run a citizenship check. He walked out to the café and was  
21 given the suspect's driver's license. Using the suspect's name and date of birth, he checked  
22 the ATS computer database to see if the suspect had a U.S. passport. The suspect did not  
23 have one. He also found a record of a prior conviction and deportation.

24 Hoffman walked back to the agents and explained what he had found. He and Agent  
25 Espinoza escorted the suspect to his work station. Hoffman testified that he did not speak  
26 in a forceful tone or put the suspect in handcuffs.

27  
28 **Edward Rodriguez (affidavit)**

1 Edward Rodriguez is a U.S. Customs and Border Protection officer.

2 On September 23, 2011, Rodriguez was informed that a suspicious male was seen  
3 crossing Highway 85 approximately 100 yards north of the Port of Entry and entering the  
4 Gringo Pass gas station. Rodriguez observed the man walk south into the café. Agent  
5 Espinoza began walking toward the suspect, and Rodriguez followed for officer safety.

6 Espinoza opened the door to the café and asked the suspect to come over. He asked  
7 the suspect his citizenship, and the suspect stated he was a U.S. citizen. Espinoza asked for  
8 identification and the suspect offered a California identification card. Rodriguez asked the  
9 suspect if he had a U.S. passport. The suspect answered that he did, but he had forgotten it.  
10 Espinoza asked the suspect, the defendant, to come outside of the café, and the defendant  
11 complied.

12 Rodriguez asked how he had arrived at the gas station, and the defendant said he had  
13 been dropped off there. When Rodriguez told the defendant he had been seen crossing the  
14 street, the defendant said he had been visiting friends in the trailer park. Rodriguez asked  
15 whom he had been visiting, but the defendant just smiled and did not reply.

16 When Hoffman arrived, Rodriguez asked him to run checks on the defendant's  
17 California ID card. The defendant handed his California ID card to Hoffman. Rodriguez  
18 told Hoffman that the defendant said he had a U.S. passport.

19 After running his checks, Hoffman returned saying he received conflicting  
20 information. Espinoza asked the defendant if he would accompany the agents to the Port of  
21 Entry, and he agreed. Rodriguez walked halfway to the secondary inspection area leaving  
22 the defendant with Hoffman and Espinoza.

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24 **DISCUSSION: Motion to Suppress**

25 The defendant argues he was seized in violation of the Fourth Amendment and  
26 interrogated in violation of his rights under *Miranda*. The court concludes the defendant's  
27 constitutional rights were not violated. The agents initial contact with the defendant in the  
28 café was consensual and did not implicate the Fourth Amendment.

1 “Stops under the Fourth Amendment fall into three categories.” *Morgan v. Woessner*,  
2 997 F.2d 1244, 1252 (9<sup>th</sup> Cir. 1993), *cert. dismissed*, 510 U.S. 1033 (1994). “First, police  
3 may stop a citizen for questioning at any time, so long as that citizen recognizes that he or  
4 she is free to leave.” *Id.* “Such brief, ‘consensual’ exchanges need not be supported by any  
5 suspicion that the citizen is engaged in wrongdoing, and such stops are not considered  
6 seizures.” *Id.* “Examples of circumstances that might indicate a seizure, even where the  
7 person did not attempt to leave, would be the threatening presence of several officers, the  
8 display of a weapon by an officer, some physical touching of the person of the citizen, or the  
9 use of language or tone of voice indicating that compliance with the officer’s request might  
10 be compelled.” *U.S. v. Mendenhall*, 446 U.S. 544, 554-555, 100 S.Ct. 1870, 1877 (1980).

11 “Second, the police may ‘seize’ citizens for brief, investigatory stops.” *Morgan*, 997  
12 F.2d at 1252. This class of stops is not consensual, and such stops must be supported by  
13 ‘reasonable suspicion.’” *Id.* Finally, police stops may be full-scale arrests. *Id.* These stops,  
14 of course, are seizures, and must be supported by probable cause. *Id.*

15 Here, the agents approached the defendant in a public place, the café, and asked if he  
16 would answer some questions. The defendant willingly explained that he was a U.S. citizen  
17 and offered his California ID card. The agents asked if they could continue their  
18 conversation outside, and the defendant complied. Agent Espinoza spoke to the defendant  
19 in a conversational tone. He did not tell the defendant he had to comply with the agents’  
20 requests. Espinoza was in the standard Border Patrol green uniform and he was accompanied  
21 by Agent Rodriguez, but the two men did not try to surround the defendant. They were  
22 armed, but their weapons were not drawn. The encounter between the agents and the  
23 defendant in the café was consensual. There was no seizure. *See U.S. v. Drayton*, 536 U.S.  
24 194, 200-201, 122 S.Ct. 2105, 2110 (2002) (“Even when law enforcement officers have no  
25 basis for suspecting a particular individual, they may pose questions, ask for identification  
26 . . . provided they do not induce cooperation by coercive means.”).

27 This consensual encounter ripened into an investigatory stop by the time the  
28 defendant’s identification was taken away by Agent Hoffman. At this point, a reasonable

1 person would not feel free to end the encounter and walk away. *See I.N.S. v. Delgado*, 466  
2 U.S. 210, 215, 104 S.Ct. 1758, 1762 (1984) (“[A]n initially consensual encounter between  
3 a police officer and a citizen can be transformed into a seizure or detention within the  
4 meaning of the Fourth Amendment, if, in view of all the circumstances surrounding the  
5 incident, a reasonable person would have believed that he was not free to leave.”)  
6 (punctuation modified); *see, e.g., U.S. v. Low*, 887 F.2d 232, 235 (9<sup>th</sup> Cir. 1989) (“The  
7 retention of an airplane ticket beyond the interval required for the appropriate brief scrutiny,  
8 may constitute a ‘watershed point’ in the seizure question.”) (punctuation modified); *U.S. v.*  
9 *Weaver*, 282 F.3d 302, 310 (4<sup>th</sup> Cir. 2002) (“[N]umerous courts have noted that the retention  
10 of a citizen’s identification or other personal property or effects is highly material under the  
11 totality of the circumstances analysis.”), *cert. denied*, 537 U.S. 847 (2002). There was no  
12 Fourth Amendment violation, however, because at this point the agents had reasonable  
13 suspicion.

14 Reasonable suspicion exists when, based on the “totality of the circumstances,” “the  
15 detaining officers have a particularized and objective basis for suspecting the particular  
16 person stopped of criminal activity.” *U.S. v. Cortez*, 449 U.S. 411, 417-18, 101 S.Ct. 690,  
17 695 (1981) The court may consider, among other things, “characteristics of the area,”  
18 “proximity to the border,” the behavior of the suspect, and “officer experience.” *U. S. v.*  
19 *Tiong*, 224 F.3d 1136, 1139 (9<sup>th</sup> Cir. 2000).

20 In this case, the suspect looked out of place and had a guarded demeanor. His  
21 clothing was disheveled; bits of leaves clung to his pant legs. He was in a place the agents  
22 knew was frequented by illegal aliens. He responded to the agents’ questions but failed to  
23 dispel their concerns. When asked how he got there, the suspect responded that he was  
24 dropped off at the gas station. When told that he was seen crossing the road toward the gas  
25 station, he changed his story and said he was visiting friends at the trailer park. When asked  
26 for the friends’ names, he declined to answer. As the questioning continued, the suspect had  
27 difficulty answering. He was “almost stuttering, basically shaking.” These facts and  
28 circumstances combined with the training and experience of the agents constitute reasonable

1 suspicion for the investigative detention. *See, e.g., U.S. v. Hernandez-Lopez*, 538 F.2d 284,  
2 285 (9<sup>th</sup> Cir. 1976) (Passenger’s demeanor, dress, general appearance, and nervous behavior  
3 constituted reasonable suspicion.), *cert. denied*, 429 U.S. 981 (1976).

4 The defendant further argues the agents’ questioning violated his rights under  
5 *Miranda*. The court finds the defendant was not “in custody” for the purposes of *Miranda*.

6 “In *Miranda v. Arizona*, the Supreme Court adopted prophylactic procedural measures  
7 to guarantee that a suspect is advised of his Fifth Amendment rights before custodial  
8 interrogations.” *U.S. v. Craighead*, 539 F.3d 1073, 1082 (9<sup>th</sup> Cir. 2008) (citing 384 U.S. 436,  
9 444–45, 86 S.Ct. 1602 (1966)). “An officer’s obligation to administer *Miranda* warnings  
10 attaches, however, only where there has been such a restriction on a person’s freedom as to  
11 render him ‘in custody.’” *Stansbury v. California*, 511 U.S. 318, 322, 114 S.Ct. 1526, 1528  
12 - 1529 (1994) (punctuation modified). “In determining whether an individual was ‘in  
13 custody,’ a court must examine all of the circumstances surrounding the interrogation, but  
14 the ultimate inquiry is simply whether there was a formal arrest or restraint on freedom of  
15 movement of the degree associated with a formal arrest.” *Id.* “Pertinent areas of inquiry  
16 include the language used by the officer to summon the individual, the extent to which he or  
17 she is confronted with evidence of guilt, the physical surroundings of the interrogation, the  
18 duration of the detention, and the degree of pressure applied to detain the individual.” *U.S.*  
19 *v. Medina-Villa*, 567 F.3d 507, 519 (9<sup>th</sup> Cir. 2009) (punctuation modified), *cert. denied*, 130  
20 S.Ct. 1545 (2010).

21 In this case, while the defendant was subject to an investigative detention, he was not  
22 “in custody” for the purposes of *Miranda*. The agents spoke in a conversational tone. They  
23 asked for his citizenship, but did not accuse him of being an illegal alien. Although the  
24 duration of the stop was not discussed specifically, it does not appear to have been lengthy.  
25 Finally, and perhaps most importantly, the questioning took place in public. *See Berkemer*  
26 *v. McCarty*, 468 U.S. 420, 438, 104 S.Ct. 3138, 3149 (1984) (“Perhaps most importantly, the  
27 typical traffic stop is public, at least to some degree.”).  
28



1 Based on the totality of the circumstances, the court concludes the defendant was not  
2 in custody for the purposes of *Miranda* during the investigative detention outside the café.  
3 *See, e.g., U.S. v. Medina-Villa*, 567 F.3d 507, 520 (9<sup>th</sup> Cir. 2009) (“Even though the border  
4 patrol agent prevented Medina from leaving the parking lot by blocking his car, approaching  
5 it with his gun drawn, and interrogating him about his citizenship and immigration status. .  
6 . Medina was not in custody and was not entitled to *Miranda* warnings.”).

7 After running his computer inquiries, Hoffman walked back to the agents and  
8 explained what he found. Contrary to the defendant’s assertions, he discovered the defendant  
9 did not have a U.S. passport. Moreover, he found a record of a prior conviction and  
10 deportation. The agents then escorted the defendant to the secondary inspection room.

11 At some point, possibly when the defendant was escorted to the secondary inspection  
12 area, the investigative detention ripened into an arrest. *See U.S. v. Chamberlin*, 644 F.2d  
13 1262, 1267 (9<sup>th</sup> Cir. 1980) (Terry stop ripened into an arrest when the suspect “was placed  
14 in the back seat of a police car for twenty minutes.”), *cert. denied*, 453 U.S. 914 (1981); *but*  
15 *see U.S. v. Butler*, 249 F.3d 1094, 1100 (9<sup>th</sup> Cir. 2001) (“It is true that the mere detention of  
16 a person in a border station’s security office from which he or she is not free to leave, while  
17 a search of a vehicle occurs, is not ‘custody’ for these purposes.”). The court need not decide  
18 precisely when this actually occurred because as soon as Agent Hoffman made his inquiries,  
19 the agents had probable cause to arrest the defendant.

20 Probable cause which exists “when, under the totality of the circumstances known to  
21 the arresting officers, a prudent person would have concluded that there was a fair probability  
22 that the defendant had committed a crime.” *U. S. v. Garza*, 980 F.2d 546, 550 (9<sup>th</sup> Cir. 1992)  
23 (internal punctuation removed).

24 Here, the agents knew, in addition to all that they had discovered previously, that the  
25 suspect did not have a U.S. passport, as he claimed. They further found a record of a prior  
26 conviction and deportation associated with his name and date of birth. Based on this  
27 information, a prudent person would have concluded that there was, at least, a fair probability  
28 that the defendant had committed the crime of reentry. Accordingly, the agents had probable

1 cause to arrest the defendant at any time after Hoffman ran his computer inquiries. The  
2 defendant's eventual arrest did not violate the Fourth Amendment.

3 Finally, the court finds that the defendant was not in custody for the purposes of  
4 *Miranda* when he was escorted to the secondary inspection station and asked to submit his  
5 fingerprints.

6 The defendant willingly accompanied the agents to the secondary inspection area.  
7 The agents did not tell the defendant that he had to do so, or that he was under arrest. *See*  
8 *U.S. v. Bassignani*, 575 F.3d 879, 884 (9<sup>th</sup> Cir. 2009) ("Where we have found an  
9 interrogation non-custodial, we have emphasized that the defendant agreed to accompany  
10 officers to the police station or to an interrogation room.") (punctuation modified).  
11 Hoffman testified that he did not speak in a forceful tone or put the suspect in handcuffs.  
12 Espinoza testified the defendant was not placed in a locked room with agents around. On this  
13 record, the court cannot find that the defendant was in custody for the purposes of *Miranda*  
14 when he was escorted to the secondary inspection area. *See, e.g., U.S. v. Pitcher*, 2011 WL  
15 162406, 4 (D.Idaho 2011) (Defendant was not "in custody" for *Miranda* purposes when he  
16 "agree[d] to accompany officers to an interrogation room," he was told he was suspected of  
17 drug trafficking, he was interrogated in a small room with two officers but "seated next to  
18 the door that was not locked or blocked in any manner," he was interrogated for 90 minutes,  
19 and "the interrogation was not hostile."). The defendant's questioning at the secondary  
20 inspection area prior to his formal arrest did not violate his rights under *Miranda*.

21  
22 **RECOMMENDATION:**

23 In view of the foregoing it is recommended that, after its independent review of the  
24 record, the District Court **DENY** the motion to suppress. (Doc. 29)

25 Written objections must be served and filed by July 16, 2012. Counsel should be  
26 prepared to argue those objections the morning of trial, which is currently set for July 17,  
27 2012.

DATED this 5<sup>th</sup> day of July, 2012.

Leslie A. Bowman  
United States Magistrate Judge